

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RICHARD GATICA, Petitioner, v. JIM TILTON, Respondent.) Case No. EDCV 07-406-SVW (JC)) ORDER (1) ADOPTING REPORT AND RECOMMENDATION IN PART; AND (2) DISMISSING PETITION FOR WRIT OF HABEAS CORPUS WITHOUT PREJUDICE)

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition for Writ of Habeas Corpus by a Person in State Custody (the “Petition”) and all of the records herein, including the attached Report and Recommendation of United States Magistrate Judge (“Report and Recommendation”) and petitioner’s objections to the Report and Recommendation (“Objections”). The Court has further made a de novo determination of those portions of the Report and Recommendation to which objection is made. The Court (1) approves and adopts the Report and Recommendation in part; and (2) dismisses the Petition without prejudice.

The Court approves and adopts the Report and Recommendation to the extent it concludes (1) petitioner's challenge to the amount of his restitution fine is not cognizable on federal habeas review; and (2) petitioner's challenge to his plea,

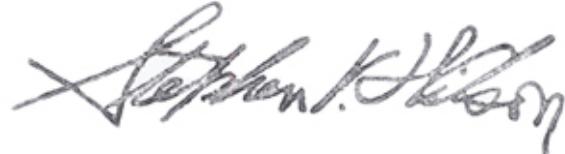
1 to the extent raised as a cognizable federal claim, is unexhausted because petitioner
2 presented his claim to the California Supreme Court only as a claim of state law
3 error. In light of the unexhausted nature of petitioner's only cognizable claim, this
4 Court concludes that the appropriate course of action is dismissal without
5 prejudice. The Court further overrules the Objections.

6 IT IS THEREFORE ORDERED that Judgment be entered dismissing the
7 Petition and this action without prejudice.

8 IT IS FURTHER ORDERED that the Clerk serve copies of this Order, the
9 Report and Recommendation, and the Judgment herein on Petitioner and on
10 counsel for Respondent.

11 LET JUDGMENT BE ENTERED ACCORDINGLY.

13 DATED: August 25, 2011



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15 HONORABLE STEPHEN V. WILSON
16 UNITED STATES DISTRICT JUDGE
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